

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

GERALD GREEN

PLAINTIFF

v.

CIVIL ACTION NO. 3:14cv293-DPJ-FKB

EVEREST ASSET MANAGEMENT, LLC

DEFENDANT

ORDER

This consumer-protection case is before the Court on Plaintiff Gerald Green's Motion for Default Judgment [9]. Having reviewed Green's submissions and the docket of this case, the Court finds that the motion should be granted.

I. Facts and Procedural History

Plaintiff Gerald Green alleges that for a period from June to November 2013, he received numerous calls on his cellular phone from an automatic-telephone-dialing system owned by Defendant Everest Asset Management, LLC. Despite Green asking Everest to cease calling him, the calls continued.

Green filed this action on April 8, 2014, asserting violations of the Telephone Consumer Protection Act of 1991 ("TCPA"), 47 U.S.C. § 227, and the Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. § 1692, *et seq.* Compl. [1]. Green served the Complaint on Everest on May 16, 2014. Aff. [5]. Everest failed to respond or otherwise appear, and, on Green's motion, the Clerk of Court entered default [7] against Everest on July 30, 2014. Green thereafter moved for default judgment [9] on his TCPA claim. The Court is prepared to rule.

II. Analysis

Pursuant to Local Rule 7(b)(E), Green submitted a proposed order analyzing his claims in this case and granting his motion for default judgment. In his motion and the proposed order, Green no longer seeks damages and attorney's fees under the FDCPA. Taking the well-pleaded factual allegations as true, as it must in light of Everest's default, the Court concludes that Green has alleged violations of the TCPA. *Cf. Meyer v. Bayles*, 559 F. App'x 312, 313 (5th Cir. 2013) (per curiam). Based on the Complaint and Green's affidavit submitted in support, the Court concludes that Green is entitled to statutory damages in the amount of \$70,500. Because the Court concludes that the damages in this action are "capable of mathematical calculation," a hearing on damages is unnecessary. *See James v. Frame*, 6 F.3d 307, 310 (5th Cir. 1993).

III. Conclusion

For the foregoing reasons, Green's Motion for Default Judgment [9] is granted. A separate final judgment will be entered in this action in accordance with Federal Rule of Civil Procedure 58.

SO ORDERED AND ADJUDGED this the 29th day of May, 2015.

s/ Daniel P. Jordan III
UNITED STATES DISTRICT JUDGE